

MINUTES
KITTY HAWK TOWN COUNCIL
Tuesday, July 7, 2020
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Introductions:
 - Police Officer I Kyle Hubbs
 - Police Officer III Jason Rigler
 - Fire Captain Brad Antons
5. Public Comment
6. Consent Agenda
 - a.) Approval of May 11, 2020, May 19, 2020 and June 1, 2020 Council Minutes
 - b.) FY 19-20 Budget Amendment #15
7. Items Removed from the Consent Agenda
8. Planning:
 - a.) Subdivision/4236 Carrenda Lane: The applicant has proposed dividing a 3.75-acre lot into a 3-lot subdivision.
9. Possible New Business
10. Reports/General Comments from Town Manager
11. Reports/General Comments from Town Attorney
12. Reports/General Comments from Town Council
13. Public Comment
14. Adjourn

COUNCILMEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Craig Garriss, Councilman David Hines and Councilwoman Lynne McClean

COUNCILMEMBERS ABSENT:

Councilman Jeff Pruitt

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Police Chief Joel Johnson and Fire Chief Mike Talley (Planning Director Rob Testerman, Finance Director Liliana Noble and Public Works Director Willie Midgett attended remotely and in person during their presentation or answering questions.)

This meeting was live streamed on YouTube and could be listened to by telephone.

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1. CALL TO ORDER

Mayor Perry called this meeting to order at 6 p.m. and announced Councilman Pruitt is absent and is excused. There are four councilmembers present, several members of the public the manager and attorney are present as well. Other staff members will join as indicated on the agenda.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

Following a moment of silence, the Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

MPT Garriss made a motion, seconded by Councilwoman McClean, to approve the agenda. The vote was unanimous, 4-0.

4. INTRODUCTIONS:

- **Police Officer I Kyle Hubbs**
- **Police Officer III Jason Rigler**
- **Fire Captain Brad Antons**

Police Chief Johnson introduced Police Officers Kyle Hubbs and Jason Rigler.

Perry: *We appreciate your coming to work for the town. I have been on the council since '05 and lived in Kitty Hawk off and on all my life. In this time of upheaval and calling for defunding the police and things of that nature ... we have been so blessed in Kitty Hawk. The leadership and the people that follow that leadership go out and try to do their best, to make it work. They are considerate and courteous. We have literally gotten compliments from people that were busted. It does not get any better than that. Folks you have a good police force. These are experienced officers and I want the people of Kitty Hawk to know it. Thank you.*

Hines: *I go along with that. I think we have the best police department on the Outer Banks and appreciate the job they do.*

Fire Chief Talley introduced Captain Brad Antons.

Perry: *And again, thank you for coming to Kitty Hawk and fleshing out what we have for a fire department. It has come a long way from the time it was all volunteer to where it is today.*

5. PUBLIC COMMENT

1. Jane Webster, 3736 Herbert Perry Road, Kitty Hawk, NC: *Good evening Mr. Mayor, distinguished council people and town officials. My late husband Sterling and I built our home*

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there six years ago. Herbert Perry Road is a quiet street. As you drive down it you pass homes and property that have remained within the Perry clan going back several generations. There is a feeling of history, of earlier times. My neighbors, many of them descendants, are warm and welcoming. It has a small-town atmosphere, so I join with my neighbors in expressing concern about the limited turn around space at the end of our road. The pavement ends in a "T" shape. The area to the right resembles parking spaces with room for two, possibly three, vehicles to pull in. The area to the left is similar but the paved area is not long enough for most vehicles to pull completely forward. It takes some tight maneuvering for the drivers of our large collection trucks to get set up to head out. Drivers of recycling trucks have stopped trying to negotiate this all together and instead they choose to back all the way out. There is considerable open space which may invite future development. I am hoping that council will think it prudent to be proactive and keep the horse in front of the cart and give careful consideration to creating a bona fide cul-de-sac at the end of Herbert Perry Road in a timely manner. I am aware that there will budget hurdles and possibly DOT considerations. Thank you so much for your time this evening. I am aware that your plates are very, very full. Thank you so much.

2. Sharon Perry Sullivan, 3708 Herbert Perry Road, Kitty Hawk, NC: *Good evening. In reference to my letter to you on June 26th I want to call your attention to the situation with the state-maintained turn around at the end of our road. It is not officially a cul-de-sac. It is some other name because of its abnormality. It precedes the private property where I live and my parents resided for the past 50 years. My grandfather purchased this property and the entire street a hundred years ago this year. Other residents and I are concerned about its capacity and also how it is subject to frequent flooding. It does not allow for sufficient space for public service and large commercial vehicles to turn around. Currently most of the drivers must drive off the existing pavement creating deep ruts going back and forth trying to navigate a turn with limited space. And it floods with every rain. With the increased number of homes and families with children and dogs this is no longer a safe or practical situation. We are requesting the town begin to address this problem and further limit development and building permits until this issue is resolved. We appreciate any communication, dialogue and resolution you can provide. Thank you.*

Not seeing anyone else that wished to speak, Mayor Perry asked if anyone on the telephone wanted to make a comment. No one answered.

Perry: *I do not want to hold you up so we will address this now. When I got Sharon's letter, I asked staff to look into what can and cannot be done. The first bullet point I tasked out is the one limiting public traffic on a state-owned public highway and right-of-way. Chief Johnson can you address this please.*

Johnson: *The only way we can restrict traffic on a state-maintained road is if there is a major accident, crime scene or a natural disaster. I do not know if anyone noticed the radar trailer we recently put beside the road. It also collects data and 137.75 cars a day, on average, passed on the trailer July 1st through the 4th. And there were some pretty high speeds. I think we have work to do on the road.*

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McClean: *One of those was me because I drove down and checked it out. (MPT Garriss and Councilman Hines said they had also driven to the end of the road to investigate.)*

Perry: *The next item was dealing with limiting further development and building permits.*

Varnell: *In the world of zoning and the legal side of things is a moratorium. Moratoriums are frequently used in North Carolina; however, they are limited in scope. Moratoriums can be issued and in doing that you can stop building permits, sign and zoning permits, subdivisions. Essentially anything that requires approval prior to development.*

One key thing to the statute is in 2011 moratoriums may not be used for the purpose of adopting ordinances regarding residential uses. It is kind of a gray area, but I think in this particular case, depending on what council wants to consider as the criteria for the moratorium ... what are we trying to accomplish in stopping the building permits? Does it flow over into regulating a residential use. Unless we chose to limit setbacks, make it further restrictive, made some lot coverage requirements or change something of that nature it might fall into that residential category. But if what we are trying to do at the end of the day is look out for the safety of our citizens and develop infrastructure because it is insufficient, which is probably the most common reason that moratoriums are issued by local governments ... if we are looking into expanding infrastructure, which would include roads, then this is something I think would fall within the bounds of the law.

It really comes down to when adopting a moratorium, what has to be answered, is why are you adopting it, what avenues are you going to pursue while the moratorium is in place and why do you think that a moratorium is the best action to take. It would go back to safety or something of that nature. I think that it is perhaps in the realm of possibility as long as we are adopting it for the right purpose.

Perry: *A moratorium as opposed to a zoning change. A moratorium cannot last forever can it?*

Varnell: *That is exactly right. I took the letter as essentially a request trying to limit development while we try to figure this out as opposed to necessarily instituting a text amendment. There are a lot of variables that would have to be considered before a zoning change or a moratorium came into play but either are options.*

Perry: *But you are stepping on a lot of property rights in the process.*

Varnell: *Especially if it is a zoning change. That is a category of not allowing development when once it was allowed. That would present some hurdles.*

Perry: *Chief Talley will you address for the fire department please the ability to turn around fire apparatus.*

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Talley: *We took one of our main apparatus out and we were able to turn around successfully. There is no doubt there is limited space, but we have the advantage of having more than one person and can utilize them as spotters. We stayed on the hard surface primarily. Except for one of our fire apparatus we can pretty much turn around all our trucks. There might be times where we must back a truck all the way out of Herbert Perry Road or find a better spot, but we do that all the time already. We encounter these types of situations routinely, so we train for it.*

Perry: *This was never a subdivision, so it never got a proper cul-de-sac. Thank you chief.*

Willie I asked you about the trash trucks and some things of that nature.

Midgett: *I spoke with Dare County sanitation and was told one of the drivers has been driving there for about 8 years and has had no issues with it. His biggest issue is with some of the brush that hangs low. School buses have not been back there for about 8 years and it is mainly because there are no school age children.*

Perry: *That is when it stopped. My grandchildren were picked up by the bus and school children was why the "T" was put in. But the buses were smaller back then. The buses today are huge. I can see why they would not want or be able to really turn around if you look at the size of them. Thank you.*

I asked the manager to check with the school system and what did you find out?

Stewart: *I contacted the Director of Transportation for Dare County Schools and they basically agreed there is not enough room to turn around a bus. But one of the reasons they do not send a bus now, and believes it to be highly unlikely they will, is because of the number of riders. There are not enough children on the street to send a bus down the road.*

Perry: *And I am going to answer the recycling trucks circumstance. When they had a straight body like our trash trucks, they were using it but then they went to an articulated trash truck and while they work well in a cul-de-sac they do not down there. The driver was having trouble and I guess a resident at the time did not want him turning around in her driveway, so I offered to let them use 3821 Herbert Perry Road. He turns around in our driveway and does not have any problems. That is unique to the truck and why they decided to use it on this route I do not know.*

There is also concern about deep ruts in the yards and if the vehicles cause the ruts does that make it a state problem requiring some sort of correction. I ask the attorney to address this.

Varnell: *If trash trucks or other service vehicles put ruts in a public right-of-way then no. We are getting the benefit of a service. If it is outside the right-of-way then they are using somebody's private property, and you have no right to do that for whatever service it is. They would be responsible for repairs. If it is within the right-of-way then I say it unfortunately comes with the territory.*

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Perry: *And that right-of-way is 30 feet from the center line.*

We are also answering questions from a letter the public has not seen and to go into a little more detail: when the "T" was put in on the west side it exceeds the public right-of-way of 30 feet on that side. The owner at the time granted the state permission to go 15 feet further off the right-of-way. In essence the state has the right to be where it is. They did not go on the east side beyond the right-of-way. Willie said someone from the state went out to look at it and measured and everything they have done so far is within the right-of-way. The state owns it and it would require the state to either take or be given some land. Sharon do you think Robin would give the state enough land to make a cul-de-sac?

Sullivan: *Robin does not own that lot anymore.*

Perry: *I thought she kept one piece.*

Sullivan: *She was supposed to and then overnight she sold it.*

Perry: *So, a person we do not know right this minute owns it.*

Sullivan: *I am trying to buy it, but I do not think he is going to sell it to me. I did not know she was going to sell it and so ... but no matter who, like I said, owns it I think it needs to be addressed.*

Perry: *That is fine and that is what we are trying to do. The state of course is broke at the moment so it is not going to happen overnight whatever happens. As a town we can ask them to program it into their STIP and see if they can put in a cul-de-sac but it sounds like it would require taking some land unless someone like you were to give them enough land.*

One last thing I want to make sure we all understand. When your Daddy brought in the fill so you could build your house, either during that time or right after it, Robin also put a lot of fill in. Water would drain but now it does not. There is no place for it to go because she put in a lot.

The best we can do for you is, if council agrees, I am going to ask the manager to write the state a letter, tell them the problems, and ask if they will look into possibly putting a cul-de-sac in which may or may not require condemning land.

Council agreed.

Garriss: *Andy have you have you or Willie touched base with DOT in person or gone out there?*

Stewart: *Willie has.*

Midgett: *It is a "T" turnaround built to their specifications.*

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Garriss: *I think that is all we can do at this point.*

McClean: *It may not need to go to the ten-year planning scenario. They might have enough of a local budget to be able to take care of something of this nature.*

Perry: *They will not even trim bushes right now that is how broke they are. They have cut out every project. When school buses still went down the road I remember if a branch brushed a bus the state was down there the next day cutting it off.*

Stewart: *What we have found for some other little requests regarding DOT rights-of-ways is if it is something that is more than DOT requires, they will allow a town to pay for it. Whether it be speed limit signs or something of that nature, but they are not going to probably do any more than what their code book says. We will definitely send a letter but that is probably going to be the response.*

Hines: *Is the 15 feet given for the "T" properly recorded?*

Perry: *I have to assume it was, but I do not know.*

Hines: *Because that might be something if there is a new owner of the lot.*

McClean: *Not that side.*

Perry: *We do not know. Anyway, that is not what we are here for. I hope we have answered most of your questions and we all have some sense of direction. I would not wait for it to happen tomorrow.*

Sullivan: *Thank you very much.*

Mayor Perry asked if there was anyone else who wished to speak in person or on the telephone. Hearing no one he asked for the record to reflect such.

6. CONSENT AGENDA

a.) **Approval of May 11, 2020, May 19, 2020 and June 1, 2020 Council Minutes.** *(An approval of the consent agenda will approve these minutes.)*

b.) **FY 19-20 Budget Amendment #15.** This amendment, in the amount of \$236,276, is to recognize the expenses incurred in FY 19-20 for debris removal from Hurricane Dorian. *(An approval of the consent agenda will approve this budget amendment.)*

Councilwoman McClean made a motion, seconded by MPT Garriss, approve the consent agenda as written. It was unanimously approved 4-0.

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7. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed.

8. PLANNING

a.) Subdivision/4236 Carrenda Lane: The applicant has proposed dividing a 3.75-acre lot into a 3-lot subdivision.

Planner Testerman reviewed the following staff report.

Proposal

The applicant has submitted an application and preliminary plat for the subdivision of the parcel at 4236 Carrenda Lane. The plat outlines a proposal to subdivide one existing parcel totaling 3.75 acres on the western side of Carrenda Lane into three lots. No new road, or road expansions are proposed as part of this subdivision. The three lots would be 35,101.15 sq. ft (30,710 sq. uplands) or 0.81-acre total area, 65,824.04 sq. ft. or 1.51 acres (64,456 uplands), and 62,206.5 sq. ft or 1.43 acres total area (53,335 sq. ft. uplands).

Because there are no improvements proposed, or recommended conditions of approval, the plat is being presented as both the preliminary and final plat. Should there be any conditions of approval which would require a revised plat, the Council can make a separate preliminary plat approval, and require a revised final plat to be submitted at a later date.

Staff Analysis

Zoning: The subject property currently has a single-family home and associated accessory structures, and is zoned VR-1, low density village residential district. The VR-1 district allows single family residences as a permitted use, by-right.

Lot Size: The minimum lot size in the VR-1 district is 15,000 square feet of non-CAMA wetlands. As noted above, all proposed lots exceed the minimum lot size.

Density: Maximum permitted density is two single-family dwellings per acre. This proposal equals 0.8 dwellings per acre.

Lot Width: The minimum lot width in the VR-1 district is seventy-five feet (75'), measured at the front building setback line on each parcel. As shown on the plat, each proposed lot meets this requirement.

Building Setbacks: Minimum building setbacks in the VR-1 district are 10 feet along the sides and 25 feet at the front and rear. The minimum building setbacks are shown on the preliminary plat.

Road Frontage: Lots must have a minimum road frontage fifty feet. It appears that all three lots will comply with this standard.

Road Rights-of-Way: There are no new roads proposed as part of this subdivision.

Land Use Plan

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the subject parcels as a "Low Density Residential Area" on the future land use map. A "Low Density Residential Area" is defined as a density averaging two (2) units per acre with lots of 15,000 square feet or greater.

The Land Use Plan also contains the following goals, policies, and objectives relating to this request:

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POLICY #11c: Kitty Hawk will review and analyze development and redevelopment proposals for consistency with the future land use map included in this land use plan.

POLICY 4b: Kitty Hawk will maintain the pattern of current development specifically low density residential (no more than 4 dwelling units per acre) and small-scale commercial development with provisions for discretionary review of large-scale commercial development.

OBJECTIVE #11d: Evaluate development and redevelopment proposals according to goals, objectives, and policies and the land suitability analysis and the future land use map developed as a part of this land use plan.

Planning Board Recommendation

At its June 11, 2020 meeting, the Planning Board unanimously recommended approval of the proposed preliminary/final plat for 4236 Carrenda Lane.

MPT Garriss moved to approve the preliminary and final plat for Tillett acres that divides one existing parcel on Carrenda Lane into 3 lots as shown on the submitted plat. Councilwoman McClean and Councilman Hines seconded and it was unanimously approved, 4-0.

9. POSSIBLE NEW BUSINESS

There was no further business to address.

10. TOWN MANAGER

Stewart: *Over the years the mayor, and I believe former Councilman Ervin Bateman, discussed having the Tourism Board help pay the police officers who provide traffic control at the US 158 and NC 12 intersection in the summer. Chief Johnson has talked with Sheriff Doughtie and he has been kind enough to provide the manpower for this project. Now we are waiting on the Tourism Board to approve the funding. Hopefully, I will have more information soon.*

Perry: *It saves local tax dollars. It is a tourist related problem and the tourists will be paying for it. I think this is the right way to go in every way. Do not forget Councilman Pruitt. He was also involved. Three native sons' kind of took a point on this and would not give it up. I am glad to see it working out.*

11. TOWN ATTORNEY

No further comments.

12. TOWN COUNCIL

Garriss: *I thank Sheriff Doughtie and his staff and the Tourism Board. Welcome to our new police and fire department members. As the Kitty Hawk representative of the Dare County Complete Count Committee regarding the 2020 Census you still have time to go online and complete your census. If you have not done so, starting about the middle of August, someone may be knocking on*

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your door. Please, this is very important, especially in today's time that we get this census taken care of. Go online and fill it out if you have not already done so. Thank you.

Perry: *Before I came to tonight's meeting, I had a call from the census. I told them I had filled it out and they said they need to double check some of my answers. You may be getting a call like that so do not ignore it just because you have sent it in.*

McClean: *We are past the 4th of July and I appreciate everything our first responders are doing out there trying to keep our town as quiet and safe as they possibly can. Everybody enjoy the rest of the summer.*

Hines: *I just want to thank the police and fire departments and the town staff for all you do.*

Garriss: *Sympathies to the family of the drowning victim this past weekend in Kitty Hawk. A tragedy.*

Perry: *Chief Talley. Are folks still responding positively to the lifeguards talking to them if they are in large groups and things of that nature.*

Talley: *No reported issues.*

Perry: *That must be unique to our town because I hear a lot of complaints in the other ones. I do not understand it.*

Talley: *I get daily reports and they are being extremely pro-active in engaging with folks. There has not been any kind of attitude or push back.*

Perry: *Thank you. I appreciate it.*

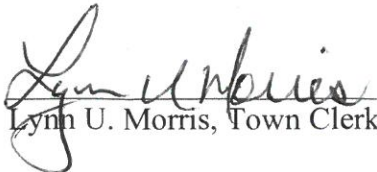
13. PUBLIC COMMENT

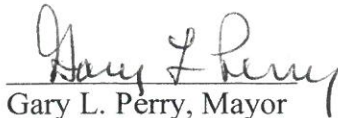
There were no further comments.

14. ADJOURN

Mayor Perry made a motion to adjourn. It was seconded by MPT Garriss and the vote was unanimous, 4-0. Time was 6:40 p.m.

These minutes were approved at the August 3, 2020 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor